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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक MAC 155/06 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO.155 OF 2006

(Hon'ble Mr. Justice Dhirendra Mishra)

APPELLANT (Non-applicant No.4)		The New India Assurance Company Ltd., Balangir (Orissa), through Manager, The New India Assurance Co. Ltd., Balangir, District Balangir (Orissa)
	Vs	
RESPONDENT No.1 (Applicant)	1.	Urmila Bai Patwa, widow of late Kailash Patwa @ Jugat Patwa, R/o. village Sonamundi, P.S. Bagbahara, District Mahasamund (CG)
RESPONDENT NO.2 (Non-applicant No.1)	2.	Ashsish Agrawal, aged about 32 years,S/o. Paras Agrawal, Khariyar Road, Ward No.10, Police Station Jonk, District Nuwapada (Orissa)
RESPONDENT NO.3 (Non-applicant No.2)	3.	Sunil Kumar Chakravarti, aged about 54 years, S/o. Satendra Kumar Chakravarti,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
		R/o. Police Station Jonk, District Nuwapada (Orissa)
	RESPONDENT NO.4 (Non-applicant No.3) 4.	Vinod Kumar Gupta, S/o. Shri Ghanshyam Gupta, near Sharma Traders, Tifra, Bilaspur, present address; Kantabhanji, District Balangir (Orissa)

Present:
Shri N.K.Agrawal, Sr. Advocate with Shri D.K.Gupta, counsel for the appellants.
Shri Ashok Dubey for respondents No. 2 to 4.

19.06.2007

This is insurer's appeal under Section 173 of the Motor Vehicles Act 1988 (hereinafter shall be called as 'the Act') against the award dated 17.3.2006 passed by 2nd Additional Motor Accident Claims Tribunal, Mahasamund in Claim Case No.136/2005 whereby a sum of Rs.1,22,000/- has been awarded as compensation to respondent No.1 for the death of her son namely Raju Patwa who died on 19.4.2005 while he was travelling in a Matador bearing registration number OR-03/A-401 which overturned near Ghatipada Mandir resulting in grievous injuries to the deceased who ultimately died. The vehicle was owned by

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respondent No.2 and was being driven by respondent No.4 at the relevant time.

Learned Sr. Counsel for the appellant submits that the vehicle in question was registered as a goods vehicle however the deceased was travelling in the said vehicle as a gratuitous passenger and in these circumstances no liability could be fastened upon the appellants, as there is a breach of policy condition. He further submits that the appellant was permitted by the tribunal under Section 170 of the Motor Vehicles Act to take defence on other grounds. The age of the claimant is admittedly 58-60 years, as held by the learned tribunal, however multiplier of 10 is applied in place of 8.

Respondent No.1/claimant Urmila Bai has also filed cross-objection under Order 41 Rule 22 of the CPC and stated in the cross objection that the age of deceased was 35 years at the time of accident and he was engaged in the profession of selling vegetables by which he was earning Rs.3,000/- per month. However the tribunal has applied multiplier of 10 in place of 18 and also assessed the income of deceased at Rs. 2,000/- per month and assessing the loss of dependency at Rs. 1,000/- the amount of compensation has been computed at Rs.1,22,000/-.

So far as the ground taken by the appellant/Insurance Company that the deceased was a gratuitous passenger and therefore the Insurance Company is not liable to satisfy the

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आदेश पत्रक (पूर्वानुबद्ध)

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impugned award is concerned, from the evidence available on record it is evident that the deceased was traveling in the said Matador along with his watermelons and Section 147(1)(b)(i) clearly stipulates in this regard that "*third party insurance covers the death of or bodily injury to any person including the owner of the goods or his authorized representative carried in the vehicle*".

In view of the above, argument of learned Sr. Counsel for the appellant in this regard is without any basis.

So far as the other objection is concerned as also the cross-objection of the respondent is concerned, from the evidence available on record, which has been dealt by the tribunal in paragraph 14 of the award, there is no evidence adduced by the claimants regarding age of the deceased. However, the tribunal in Para 14 has assessed the age of deceased at 40 years on the basis of postmortem report and accordingly assessed the age of the claimant between 58-60 years. Though the claimant has claimed that her son was earning Rs.3,000/- per month from the business but no evidence has been led in this regard and in these circumstances the tribunal has assessed the monthly income of deceased at Rs.2,000/-.

However, I am of the opinion that the reasons assigned by the Tribunal for applying multiplier of 10 for assessing compensation is proper and the same cannot be faulted. However, considering the overall evidence available on record and further

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considering that the deceased was engaged in the business of selling water melons, the income of Rs.2,000/- assessed by the tribunal is inadequate and instead the tribunal ought to have assessed the income at Rs.3,000/- per month. Therefore, it would be just and proper if the compensation payable to the respondent is assessed by taking monthly income of deceased at Rs.3,000/- and further taking loss of dependency at Rs.1,500/- per month, which would come to Rs.18,000/- per annum and after applying the multiplier of 10, the total loss of dependency would be Rs.1,80,000/- (Rs.1,500 x 12 x 10). Rs. 5000/- is awarded towards loss of love and affection, Rs. 2,000/- towards funeral expenses.

In the result, the appeal preferred by the Insurance Company is without any substance and the same is dismissed. However, the cross-objection preferred by respondent No.1/claimant is allowed, the amount of compensation is enhanced to Rs. 1,87,000/- and an additional sum of Rs.65,000/- is awarded to respondent No.1 with interest @ 6% from the date of cross objection i.e. 6.11.2006. The Insurance Company shall deposit the additional amount of compensation with the M.A.C.T. within a period of one month from today. The enhanced amount of award shall be further deposited in a fixed deposit scheme of a nationalized bank for a period of five years.

Sd/-
Dhirendra Mishra
Judge